SUSUR ROTAN MINING LTD. v. SIOW WONG FATT & ANOR.

[F.C. (Thomson L.P., Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) February 18, 1965]

[Singapore — Federal Court Civil Appeal No. 14 of 1964]

Contract — Claim for compensation by person who has lawfully done something for another person — Necessity of pleading — Contracts (Malay States) Ordinance, 1950, s. 71.

Practice and Procedure — Pleadings — Compensation under Contracts (Malay States) Ordinance, 1950, s. 71 — R.S.C. 1957, O. 20 r. 6.

The appellants spent considerable sums of money in preparing a mining scheme in pursuance of a purported oral agreement for a sublease of the mining land to them by the respondents. The learned trial judge found there was no such oral agreement but did not consider the question whether the appellants were entitled to compensation under section 71 of the Contracts (Malay States) Ordinance. On appeal it was argued: (a) the finding that there was no oral contract was wrong and (b) even if the finding was not wrong nevertheless the appellant was entitled to some monetary compensation by reason of section 71 of the Ordinance.

Held: (1) the question of the oral agreement was a question of fact but as the judge had not expressed any view as to the relative credibility of the witnesses there was open to the appellate court to consider the whole question in the light of the recorded evidence;

(2) on the evidence there was a strong probability against there having been any oral agreement;

(3) the appellants were entitled to compensation under section 71 of the Contracts (Malay States) Ordinance, even though they had not specifically pleaded such compensation.

Cases referred to:—

(1) *Ramanandi Kuer* v. *Kalawati Kuer* (1928) I.L.R. 7 Patna 221.

(2) *Chunna Malram Nath* v. *Mool Chandram Bharat* (1928) I.L.R. 9 Lahore 510.

(3) *Raja Mohan* v. *Manzoor Ahmad* A.I.R. 1943 P.C. 29, 34.

(4) *Subramanyam* v. *Thayappa* [1961] 1 Mad. L.J. (S.C.) 30; [1961] 3 S.C.R. 663.

(5) *Lever Brothers* v. *Bell* [1931] 1 K.B. 557, 583.

FEDERAL COURT. Appeal from Johore.

A. L. Hills for the appellant.

T. G. Dunbar for the respondents.

Cur. Adv. Vult.

Thomson L.P.: This litigation arises from a somewhat complicated series of dealings in relation to certain mining land in the State of Johore.

On 10th April, 1957, Siow Wong Fatt who is the respondent to the present appeal applied to the Johore State Government for a prospecting licence in respect of an area of land near the Sungei Susur Rotan in the Mukim of Ulu Sungei Sedili, District of Kota Tinggi, in the State of Johore, which I shall call "the land". The licence, which took the form of a permit to search for iron ore in a forest reserve under the Forest Rules, was issued on 21st June, 1960, and on 28th September, 1961, the State Government approved the grant to Mr. Siow of a mining lease in respect of the land. That lease was issued on 23rd January, 1962, and contains the usual provision that no transfer, sub-lease or other dealing in respect of the land should be permitted without the prior approval of the Ruler-in-Council. On the same day (23rd January, 1962) a Mining Certificate (No: 603) was granted in respect of a portion of the land.

It would appear that at first Mr. Siow had no intention of exploiting the land himself and on 17th June, 1958, he entered into an agreement with Tan Gek Piah and Tan Song Chiang who carried on business under the style of Tang Hai Mining Company ("Tang Hai"). Briefly, the effect of this agreement (as varied by a supplementary agreement on 2nd December, 1958) was that it purported to assign to Tang Hai such prospecting and mining rights as Mr. Siow might subsequently obtain in respect of the land and to execute in their favour a sub-lease of any mining lease he might obtain. In return Tang Hai was to pay the expenses of obtaining these rights and developing the mine on the land and to pay Mr. Siow a tribute of 50 cents a ton on the ore won. Then, on 3rd July, 1959, Tang Hai entered into an agreement with one Chan Sai Sow by which in consideration of a tribute of $1.40 per ton (of which, of course, 50 cents a ton would have to be paid over to Mr. Siow) they purported to assign to him their rights under their agreement of the previous year with Mr. Siow.

A company was then formed, of which Mr. Chan was a director, for the purpose of exploiting the "rights and benefits" of Mr. Chan under his agreement of 3rd July, 1959, with Tang Hai. This was the Kota Mining Company Limited ("Kota") and on 4th December, 1959, Mr. Chan executed a declaration of trust to the effect that he held the rights he had obtained from Tang Hai in trust for Kota. Subsequently Mr. Siow became a director of Kota at a date which is not altogether clear in the evidence but could not have been later than April, 1961.

Some time in 1960 Chua Ho San, said to be a wealthy miner of considerable experience, came to interest himself in the land. The evidence is silent as to his activities but he died during the year and on his death his widow and daughter formed a company which was incorporated under the name fo Susur Rotan Mining Limited in September, 1960. This company ("Susur Rotan") is the appellant in the present appeal.

On 19th September, 1960, Susur Rotan entered into two agreements with Kota. By these agreement Kota purported to assign their rights in respect of the land to Susur Rotan in return for a tribute of $4.80 a ton and the same day they were paid $40,000 by way of an advance of consideration. It was probably at some time after this that Mr. Siow became a director of Kota.

Soon after their formation in September, 1960, Susur Rotan started to prepare for the exploitation of the mining rights which in view of the series of agreements which have been related they entertained reasonable hopes of obtaining in the more or less near future. And, in circumstances which were the subject of controversy at the subsequent trial, they spent a great deal of money mainly in connection with the making of a road to the mining land, which thitherto was only accessible by sea, which they hoped might accelerate the granting of the necessary instruments by the State and would also, of course, be necessary for the future working of the mine.

Miss Chua, the daughter of the deceased Chua Ho San, who was a director of Susur Rotan, said that this is what happened and her evidence was supported by that of her mother. Mr. Siow, who knew of the agreements between Susur Rotan and Kota as well as of the agreement between himself and Tang Hai, approached Susur Rotan to make an access road to the mine. At the same time Susur Rotan were worried about so many parties being involved in the chain of agreements by reason of which they expected to obtain the sub-lease of the land. About Chinese New Year (15th February) 1961 Miss Chua had a meeting with Mr. Siow and others, including Chan Sai Sow of Kota, at which Mr. Siow suggested that the question of the sub-lease should be dealt with by his granting it direct to Susur Rotan because Susur Rotan were to be the actual miners and the other parties to the various written agreements would not object as all they were interested in was getting their tribute. This suggestion was repeated a few days later at a meeting in Singapore at which Mr. Chan was not present and it was accepted by Susur Rotan who on the strength of it and at Mr. Siow's request proceeded to construct the access road which was completed some time in December at a cost of about $100,000. None of this was reduced to writing.

Prior to this alleged oral agreement Susur Rotan had spent some small sums of money in the name of Mr. Siow in respect of obtaining permission to make the road, permission to erect a "kongsi house" for labourers and to obtain some necessary land for the dumping of ore prior to shipment, and after the alleged agreement they spent money on the preparation of a mining scheme, the fate of which is not clear from the evidence, and obtaining permission for the erection of a jetty at the place where the ore was to be loaded and obtaining some state land for the erection of a conveyer belt. The amounts involved were, however, small and it is not necessary to consider these transactions in detail beyond observing that they were all carried out either in the name of Mr. Siow or of Kota. The main and indeed the only substantial matter of expenditure was the construction of the road.

Then in January, 1962, Mr. Siow had a conversation with Miss Chua and her mother Yeo Lew Soo, who was the chairman of the board of directors of Susur Rotan, at which he suggested that Chan Sai Sow of Kota should be the manager of the mine for Susur Rotan. Miss Chua and Madam Yeo were not agreeable to this. Mr. Siow then asked why they did not give up the mine and said somebody else in Singapore was interested in it. He then took his departure.

Mr. Siow's account of these events was different. He said that shortly after the formation of Kota (which was in December, 1959) Kota started to cut boundary lines round the land for which he had applied and to carry out a great deal of prospecting work with the assistance of a firm of engineers by the name of Vallentine and Dunne Then the deceased Chua Ho San (the father of Miss Chua) came on the scene and he thought that Chua Ho San was arranging to work the mine for Kota as some sort of contractor. After Chua's death he heard of some arrangment between Kota and Susur Rotan and when he became a director of Kota in the early part of 1961 Chan Sai Sow told him that there were two agreements between Kota and Susur Rotan, one by which Susur Rotan were to work the mine as contractors for Kota and another by which Kota after they had obtained a sub-lease from him were to execute a sub-lease in favour of Susur Rotan.

He denied that he ever made any promise to Susur Rotan to grant them a sub-lease direct and he denied that he ever asked them to make the road; in fact he did not want the road, it was Kota who wanted it. He admitted that applications were from time to time made in his name in connection with the prospective working of the mine but these were not made at his request. Everything that was done, so far as he was concerned, was a matter of arrangement between Susur Rotan and Kota.

Whatever truth, if any, may lie in these two conflicting versions of the relations between Mr. Siow and Susur Rotan it is common ground that when Mr. Siow was granted a mining lease in respect of the mining land and a mining certificate was issued in his name on 23rd January,

1962, no steps were taken by anybody to grant a sub-lease or to effect any assignment of any rights under the mining certificate in favour of Susur Rotan.

Ultimately, to complete the narrative, Mr. Siow entered into certain other arrangements for the mining of the land. Mr. Siow's own version of these was that he made an arrangement with a company known as Siow Wong Fatt Mining Company, Limited, of which he is a director, under which this company worked the land on his behalf for a payment of $14 a ton. He then sold the ore to one Chng Kee Huat for $20 a ton. Out of this he paid $5.50 a ton to Kota, out of which Kota paid 84½ cents a ton to Tang Hai. The production of the mine at the time of the trial was about 5,000 tons a month and at that time, therefore, Mr. Siow was making a profit of $2,500 a month plus the two unknown quantities of his share in the $14 a ton paid to the Siow Wong Fatt Company and of his share in the $4.65½ a ton retained by Kota as against the $2,500 a month only that he would have got from his 50 cents a ton tribute under his agreements with Tang Hai.

The present litigation arose in the following way.

Soon after the granting of the sub-lease on 23rd January, 1962, it appeared to be reasonably clear that Mr. Siow had no immediate intention of granting a sub-lease to anybody that would enable any of the written agreements which had been executed to be carried out and a long correspondence accordingly commenced among the various parties and their solicitors which it is not necessary to relate in detail.

As regards Kota, that correspondence ended in a letter dated 15th March, 1962, from their solicitors to Susur Rotan's solicitors by which in effect they repudiated the agreements of 19th September, 1960.

As regards Mr. Siow, Susur Rotan's solicitors wrote a letter to his solicitors dated 27th March, 1962, which set out the chain of agreements commencing with Mr. Siow and ending with Susur Rotan and concluding "In accordance with the interpretation of the agreements in question, you are now under a personal obligation to execute a sub-lease or transfer of the mining land in favour of our clients". The reply to that was on 11th April, 1962, and simply said "There was no agreement between Mr. Siow and your clients".

Ultimately on 27th July, 1962, Susur Rotan lodged a caveat against the land and on 17th September, 1962, they commenced the present proceedings against Mr. Siow and against Kota.

Against Kota the claim was based on the repudiation of the agreements of 19th September, 1960. It is not necessary to discuss this claim in detail for at the commencement of the subsequent trial Kota consented to judgment being entered against them for $30,000.

As against Mr. Siow the case as pleaded was that about the time of the Chinese New Year (15th February), 1961, it was orally agreed between the parties that in consideration of Susur Rotan taking such steps as were necessary to enable Mr. Siow to obtain a mining lease and to assist him in preparation for mining generally, he would, if and when granted a mining lease, grant to Susur Rotan a sub-lease subject to a tribute of 50 cents a ton to be paid by them. In part performance of this oral agreement the plaintiffs had spent considerable sums of money (which were specified) on preparing a mining scheme, conducting prospecting operations, constructing a road to the land and for other purposes and had entered into possession of the land. In the circumstances they claimed specific performance of the alleged oral agreement or alternatively damages, appointment of a receiver and such further and other relief as the court might deem fit. And, although this was not pleaded in terms, counsel for Susur Rotan made it clear both in his opening and his closing addresses that it was his clients case that if they failed in their claim under the alleged oral agreement then they were in any event entitled to compensation under section 71 of the Contracts Ordinance.

The case came on for trial at Johore Bahru on 10th November, 1963, and at the commencement of the trial counsel for Susur Rotan announced the settlement between his clients and Kota whereby Kota submitted to judgment for $30,000 in full and final satisfaction of the claim against them, each side to pay its own costs. Kota having thus disappeared from the scene the case went on against Mr. Siow in whose favour judgment was eventually entered.

Against that decision Susur Rotan have now appealed.

The trial judge dealth with the evidence in a long and careful judgment and came to the conclusion that Susur Rotan had failed to prove the oral agreement on which they based their claim and had failed to prove that they had built the access road to the mine in accordance with, or as part of the consideration for, any such agreement and it was on these grounds that he dismissed the claim. He did not, however, consider the question of whether Susur Rotan were entitled to compensation under section 71 of the Contracts Ordinance.

The present appeal falls into two parts. First, it is said that the finding that there was

no oral contract as pleaded by Susur Rotan is wrong. Second, it is said that even if that finding was not wrong nevertheless Susur Rotan were entitled to some monetary compensation by reason of section 71 of the Contracts Ordinance. These two parts of the appeal will have to be dealt with separately.

The question of the oral agreement is essentially a question of fact but as the judge has not expressed any views as to the relative credibility of the witnesses, particularly Mr. Siow and Miss Chua, it is open to this court to consider the whole question in the light of the recorded evidence.

It will be convenient to commence an examination of the evidence by considering the probable state of mind of the parties early in 1961. At that time Mr. Siow had agreed to grant a sub-lease to Tang Hai and he knew that the benefit of that agreement had passed to Kota and that Susur Rotan had acquired the benefit of it by virtue of their agreements with Kota. What he was to get was his tribute of 50 cents a ton. Susur Rotan had their agreements with Kota and they knew of the antecedent agreements forming the chain which led to them from Mr. Siow. The effect of these was in effect that they were to get the sub-lease (or a sub-sub-lease) when the mining lease was granted to Mr. Siow and they were to pay a tribute of $4.80 a ton to Kota. In the circumstances it was in the interest of both parties that the grant of the lease to Mr. Siow and the getting of the mine into production should be accomplished as soon as possible for the sooner these things were done the sooner would Mr. Siow start receiving his tribute and the sooner would Susur Rotan start making their mining profits. Kota, whose position was known to both sides and who also had an interest in the mine being brought into production so that they could start receiving their tribute of $4.80 a ton, were still taking an active interest in the whole affair. In all the circumstances it is at the lowest possible that nobody was very interested as to who did what in the name of whom so long as progress was made towards the common end of getting the mine into production.

Again, it is difficult to see that either party had any motive for making the alleged oral agreement for a direct sub-lease to Susur Rotan. Mr. Siow certainly had no such motive. If he was an honest man he did not stand to gain by it in any way. And if he was a dishonest man and was already regretting his agreement with Tang Hai and looking for a more profitable way of exploiting his lease it was still less to his interest to do anything in the way of enabling Susur Rotan to acquire contractual rights directly against himself, particularly in the light of his own close relations with Kota.

Nor did Susur Rotan stand to gain from such a new agreement. Miss Chua said she was worried about the sub-lease having to pass through so many hands before it passed to Susur Rotan and that in effect she would feel a greater sense of security if she had a direct agreement with Mr. Siow. This no doubt showed a business-like lack of faith in human nature and in the infallibility of lawyers. It is, however, not very easy to reconcile with the fact that her agreements with Kota had been drawn up by her solicitors who had before them the antecedent agreements in the chain. Frankly it seems incredible that she should think she would derive any advantage from the substitution of an oral agreement for a series of carefully drafted written agreements.

Again, the fact that the road was made does not carry the argument very far in any direction. There was no satisfactory evidence that the making of the road would accelerate in any way the granting of the lease to Mr. Siow. On the other hand it was something that would have to be done some time as part of the development of the mine, and be done at the expense of Susur Rotan as the operating company in whatever way the sub-lease came to them. As has been said the sooner it was done the better, but the better for both parties.

Finally, there is the extraordinary fact that until long after the parties fell into dispute Susur Rotan made no attempt to set up the alleged oral agreement. Miss Chua said that she had preferred this oral agreement as being more reliable and offering greater security than the chain of written agreements. There was a great deal at stake. It was not something she would be likely to forget when the interests of her company were imperilled. And yet we find that as late as 27th March, 1962, the company's solicitors wrote a letter to Mr. Siow reciting the various written agreements in the chain and stating:—

> "In accordance with the interpretation of the agreements in question, you are now under a personal obligation to execute a sub-lease or transfer of the mining land in favour of our clients."

In this letter there is not a word about any oral agreement.

The reply to that by Mr. Siow's solicitors on 11th April, 1962, was that "there was no agreement between Mr. Siow and your clients" which might have been expected to elicit the reply that although there might not be any written agreement there was an oral one. There was no such reply. Three months later, on 26th June, 1962, a caveat was lodged against the land which was signed and sworn to by Miss Chua who is sufficiently familiar with English

to be able to give evidence in that language. This recited the written agreements but did not mention any oral one.

Indeed no mention whatsoever was made of the alleged oral agreement until the endorsement of claim on the writ which was issued on 17th September, 1962.

On all this it is clear that Miss Chua did not tell her solicitors about the oral agreement until at any rate after the lodging of the caveat. Her explanation of this was not convincing. It did not occur to her to write to Mr. Siow or to tell her lawyer about the oral agreement. She was lost. She had completely forgotten about it until she suddenly remembered when she was looking through her documents and came across a resolution in the minute book of the company.

This resolution which was signed by Miss Chua and her mother and dated 18th February, 1961, read as follows:—

"RESOLVED that the company be and is hereby authorised to start construction of the ROAD and to do all that are reasonably necessary in order to help Mr. Siow Wong Fatt to obtain a Mining Lease on the assurance of Mr. Siow Wong Fatt that he will transfer the sub-lease direct to us when the Mining Certificate is issued by the authority."

There is, however, room for doubt as to whether the record of this resolution was made on the date which appears on the face of it. It is pasted on to the very first page of the unpaginated volume in which it occurs, an operation which could have been carried out at any time. Moreover it occurs only nine pages prior to a resolution purporting to authorise the lodging of the caveat of 26th June, 1962, and it is difficult to suppose that Miss Chua should not have come across it at that stage at the very latest had it been then in existence and in the position it now occupies in the book.

In all the circumstances, then, as they have been related I am compelled to the conclusion that there is a strong balance of probability against there having been any oral agreement of the sort alleged by Miss Chua. It is not necessary to go so far as to say that the whole thing was a deliberate concoction. It may well be that in the course of conversations Mr. Siow may have laid much stress on the consideration that Susur Rotan was going to get the sub-lease in the end and that the effect on Miss Chua's mind of increasing anxiety as to whether approaching litigation might not rob her company of the fruits of the chain of agreements may have been to affect her recollection of these conversations. Nevertheless it is hardly possible to disagree with the trial judge's finding that Mr. Siow made no promise of the sort alleged.

So much for the first part of the appeal.

There remains, however, the other part of the appeal, the question of compensation under section 71 of the Contracts Ordinance. That section, which is the same as section 70 of the Indian Contract Act, reads as follows:—

"Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the later is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

As is pointed out by the editors of *Pollock and Mulla* on "The Indian Contract Act" (8th Ed.; p. 424), "this section goes far beyond English law". Moreover its interpretation is, to my mind, to be approached in the light of certain observations of the Privy Council in the cases of *Ramanandi Kuer* v. *Kalawati Kuer* [1] and *Chunna Malram Nath* v. *Mool Chandram Bharat*.[2] In the former case Lord Sinha said this (at p. 227):—

"It has often been pointed out by this Board that where there is a positive enactment of the Indian Legislature the proper course is to examine the language of that statute and to ascertain its proper meaning, uninfluenced by any consideration derived from the previous state of the law — or of the English law upon which it may be founded."

And in the latter case Lord Atkinson said this with reference to section 63 of the Indian Contract Act (our section 64) (at p. 518):—

"The language of the section.....ought not to be enlarged by any implication of English doctrines."

Now, it has never been denied that during the course of their relations with Mr. Siow Susur Rotan spent a great deal of their own money. Some of it was spent on taking steps that were necessary before the State would grant Mr. Siow his lease; most of it was spent on things, particularly the making of the road to the mining site, which were necessary, or at any rate highly desirable, for the profitable development of the mine, though I would pause here to observe that in my view a sum of some $2,000 that was spent on obtaining a mining scheme from a firm of engineers by the name of Wilkins does not fall within either of these categories because the evidence as to what use, if any, was ever made of this scheme is far from clear.

But in both categories the money was spent for Mr. Siow in the sense that when it was spent only Mr. Siow had any standing in relation to the land and it was spent with his knowledge, even though it be true as he alleged that he did not know whether Susur Rotan or Kota (it could not have been anybody else) was spending it. It was not spent gratuitously because Susur Rotan clearly had no intention that anybody else should have the benefit of it for nothing. And the person who has enjoyed the benefit is Mr. Siow. The money had to be spent by somebody to transform Mr. Siow's prospects and then his

lease into a profitable mining proposition, it had to be spent by somebody at some time, and it seems a matter of ordinary common sense that the fact that it had been spent and did not have to be spent in future must have affected the nature of Mr. Siow's subsequent arrangements with Siow Wong Fatt Mining Company, Limited, and Kota. In the circumstances it seems clear that Mr. Siow must pay compensation under section 71.

For Mr. Siow it has been urged that even if he would otherwise be liable to pay such compensation Susur Rotan are not entitled to recover it in the present proceedings because no claim for it was specially pleaded. Compensation under the section is analogous to special damages and like special damages must be specially pleaded.

Now, the point, though this of course does not of itself deprive it of merit, is a very technical one. After all the statement of claim sets out particulars of the money that was spent by Susur Rotan and counsel for the company made it quite clear both in opening and closing his case that if he failed on his claim in contract as pleaded he would none the less be entitled to his remedy under section 71.

The point, however, rests on an analogy. An analogy is not an argument and any analogy between what may compendiously be called an English remedy and an Indian remedy calls for careful scrutiny.

The expression "damages" is habitually used by lawyers in this country in relation to contract irrespective of whether the law applicable is, as in Singapore, the English Common Law or, as in Johore, the Contracts Ordinance. But the word "damages" is nowhere to be found in the Contracts Ordinance. The word that is used throughout the Ordinance is "compensation" and it is used in a wider sense than the word "damages" bears in English law; it includes every pecuniary remedy under the Ordinance, not only "damages" and "compensation" as distinct from damages as these expressions are used in England in relation to contract, but also remedies unknown to the English law as under section 71.

The question of pleading was considered by the Privy Council in the case of *Raja Mohan* v. *Manzoor Ahmad* [3] in relation to section 65 of the Indian Contract Act which is the same as section 66 of our Ordinance. The claim in that case had been based on a mortgage which the court found to be invalid and the Chief Court of Oudh had refused to entertain a claim for compensation under section 65 because it had not been pleaded. In the event, however, the Privy Council (*per* Sir George Rankin) said this:—

> "With all due respect to the Chief Court, their Lordships think that their attitude towards the question of pleading was unduly rigid. A defendant who when sued for money lent pleads that the contract was void can hardly regard with surprise a demand that he restore what he received thereunder.....There is no reason to apprehend that by allowing the appellants to obtain relief under section 65 any injustice to the respondents can result. On the contrary, prima facie it is hardly just that the rights of the parties in respect of the transaction of 12th August 1919, should be dealt with in part and in part postponed. Though a matter of discretion a result so inconvenient needs to be justified by solid reason and their Lordships see no sufficient reason to prevent restitution being ordered in this case."

Much the same thing was said by the Supreme Court of India in relation to Indian section 70 (our section 71), the relevant section in the present case, in the case of *Subramanyam* v. *Thayappa* [4] where it was said:—

> "If a party to a contract has rendered service to the other not intending to do so gratuitously and the other person has obtained some benefit, the former is entitled to compensation for the value of the services rendered by him. Evidently, the respondent made additional constructions to the building and they were not done gratuitously. He was therefore entitled to receive compensation for the work done which was not covered by the agreement. The respondent claimed under an oral agreement compensation at prevailing market rates for work done by him: even if he failed to prove an express agreement in that behalf, the court may still award him compensation under section 70 of the Contract Act. By awarding a decree for compensation under the Statute and not under the oral contract pleaded, there was in the circumstances of this case no substantial departure from the claim made by the respondent."

It will be observed that in neither of these cases is there any reference to differences between Indian procedure and English procedure. It is to be noted, however, that the relevant Indian rule is rule 7 of Order 7 in the First Schedule to the Code of Civil Procedure which is the same as our Order 20 rule 6 and Order 20 rule 6 of the English Rules of 1883.

And in any event the practice of the courts in England "has been to consider and deal with the legal result of pleaded facts, though the particular legal result alleged is not stated in the pleadings" (*per* Scrutton L.J.: *Lever Bros.* v. *Bell* [5]).

I am therefore of the opinion that Susur Rotan are entitled to compensation equivalent to all moneys spent by them in relation to Mr. Siow's mining land (other than the payment to Messrs Wilkins which has been mentioned) and that the judgment of the court below should be varied by being entered in their favour for that amount, to be ascertained in default of agreement by the Registrar under Order 36 rule 57.

As regards costs, clearly there will have to be some sort of apportionment but I would wish to reserve my opinion till we have heard counsel.

MLJ 2001

Wee Chong Jin C.J. (Singapore) and **Tan Ah Tah F.J.** concurred.

Judgment of the court below varied.

Solicitors: *Donaldson & Burkinshaw; Murphy & Dunbar.*

VASUDEVAN PILLAI & ANOR. v. CITY COUNCIL OF SINGAPORE

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Wee Chong Jin C.J. (Singapore)) February 22, 1965]

[Singapore — Federal Court Civil Appeal No. 90 of 1963]

Master and Servant — Summary dismissal — Refusal to obey lawful orders of employers — Inquiry — Failure to comply with rules of natural justice.

Administrative Law — Domestic tribunal — Natural justice — Failure to comply with rules of — Not curable on appeal.

The appellants claimed a declaration that their dismissal from the employment of the defendants was wrongful. The trial judge found on the facts that the City Council were justified in dismissing the appellants as they had refused to obey lawful orders. He also found that the officer who conducted the inquiry relating to the appellants had not complied with the rules of natural justice but that this failure had been cured, by proceedings before the sub-committee of the establishments committee. The appellants appealed.

Held: as the appellants had deliberately refused to do work which fell within the scope of their employment the respondents were entitled to dismiss them summarily.

Per Wee Chong Jin C.J. (Singapore): The trial judge was wrong in saying that though there had been a failure to comply with the rules of natural justice by the inquiry officer this had been cured by proceedings before the sub-committee of the establishments committee. Where a quasi-judicial tribunal has failed to observe the rules of natural justice, such failure cannot be cured by the fact that on the appeal, the appellate tribunal has so conducted its proceedings as to observe all the rules of natural justice.

Cases referred to:—

(1) *Annamunthodo* v. *Oilfields Workers' Timber Union* [1961] A.C. 945; [1961] 3 All E.R. 621.

(2) *Andrea* v. *British Italian Trading Co. Ltd.* [1962] 1 Lloyd's L.R. 151.

FEDERAL COURT.

L. A. J. Smith for the appellants.

J. Grimberg for the respondents.

Cur. Adv. Vult.

Thomson L.P.: I have had the benefit of reading the judgment of the Chief Justice in Singapore and I am in agreement with the result at which he has arrived. I have, however, arrived at that result by a somewhat different course of reasoning which I desire to state very briefly.

I agree with his Lordship and with the trial judge that on the evidence it is clear beyond any question that the plaintiffs who were employed by the City Council as labourers deliberately refused to do work which fell within the scope of their employment. In other words they refused to do what they had agreed to do. This was clearly a repudiation by them of their contract with the City Council. The fact that it was based on a view held in good faith but which the court below and this court have held to be wrong has nothing to do with the case. They could have taken the view of the courts on the point but they decided to act on their own view and like other people who act on a mistaken view of the law they must take the consequences. Here the consequences are that in the circumstances the City Council were entitled, if they saw fit, to treat the contract as at an end. That is just what they did. In popular language they dismissed the plaintiffs.

I say "in popular language" for in cases of this nature a certain confusion of thought would be avoided if it were appreciated that in relation to contracts of employment the word "dismiss" may have any one of three entirely different meanings:—

(1) it may be applied to the action of an employer in putting an end to the contract of employment in accordance with its own terms as by giving notice;

(2) it may be applied where the employer purports to put an end to the contract otherwise than in accordance with its provisions, in other words where the employer repudiates the contract;

(3) it may be applied where, as here, the employee repudiates the contract and the employer exercises his right to treat the contract as being thereby at an end.

Before departing from the case I would, with great respect, observe that I really fail to see the relevant of the argument which was pressed upon us so strongly, but regarding which I express no opinion, that there was some sort of failure of what is called natural justice on the part of the City Council.

The original dispute between the plaintiffs (or rather their trade union) and the City Council was as to whether or not the work which the plaintiffs refused to do was unskilled work falling within the scope of their employment which they were not entitled to refuse or skilled work which was outside the scope of their employment and which they were entitled to refuse. It was not until more than five years after the commencement of the action, and indeed after the trial had actually begun, that the natural justice argument was imported into the case at all.